IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2444 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYABHAI MULJIBHAI CHAUHAN EX-ARMED POLICE CONSTABLE

Versus

SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 2444 of 2002

MR IS SUPEHIA for Petitioner No. 1

MR SUDHIR MEHTA, Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 27/03/2003

ORAL JUDGEMENT

1. With the consent of the parties when the Civil Application came up for hearing, main matter is taken up

for final hearing.

2. The short facts of the case are that the petitioner was working as Armed Police Constable. The show-cause notice was given to him as to why he should not be dismissed from the service under Rule 3 of Bombay Police (Punishment and Appeals) Rules, 1956 without holding departmental inquiry and the petitioner submitted the reply to the said show-cause notice dated 24-9-2000 and ultimately on 8-10-2001 respondent No.1 i.e. Superintendent of Police, Kheda passed the order of dismissing the petitioner from service. It is the case of the petitioner that in the order itself at the last paragraph, it has been mentioned that if the petitioner is so desirous, appeal can be preferred before the Special IGP, Ahmedabad within a period of 60 days from the receipt of the order. It appears that the appeal was preferred by the petitioner to the Special IGP, Ahmedabad. However, the said appeal was dismissed as not maintainable since the petitioner was dismissed from service by invoking Proviso (2) of Article 311 of the Constitution and the petitioner was asked that if he is so desirous, the matter can be carried before the Court.

3. The contention raised on behalf of the petitioner is that the very officer namely; Special IGP in the case of one Armed Police Constable, Nandishkumar Shankerlal, Buckle No.482 had entertained the appeal against the order of dismissal passed in exercise of power under Proviso (2) of Article 311 of the Constitution and not only that but the punishment was modified. However, so far as the appeal of petitioner is concerned, the same is dismissed as per the communication dated 5-1-2002 as not maintainable. It has been submitted by the petitioner that on 23-11-2001, in the case of Nandishkumar Shankerlal, order in appeal was passed by entertaining the appeal on merits.

4. On behalf of the respondent State authorities, Mr.Mehta, learned AGP submitted that so far as the case of Armed Police Constable, Nandishkumar Shankerlal is concerned, it was a different case, because the opportunity of hearing was not given by the disciplinary authority before passing the order of dismissal and even before invoking proviso of Article 311 of dispensing with the inquiry and he submitted that so far as the petitioner is concerned, the opportunity was given and thereafter the order came to be passed and, therefore, he submitted that the order passed by the appellant authority is legal and appropriate. However, Mr.Mehta is not in a position to show such distinguishing feature

from the order of the appellate authority dated 5-1-2002, which is impugned in the present petition.

5. Having considered the aforesaid submissions and the perusal of the order dated 5-1-2002 shows that the appeal is dismissed on the ground that since the powers were exercised under Proviso (2) of Article 311 of the Constitution, the decision of the disciplinary authority shall be final and, therefore, the appeal is not maintainable. Even if the contention of the learned AGP is to be examined, then also, in my view, the appellate authority will not be justified in rejecting the appeal only on the ground that it is not maintainable. There is no reference whatsoever on distinguishing the case as sought to be canvassed by the learned AGP. The position of law for exercise of power under Proviso (2) of Article 311 of the Constitution for dispensing with the inquiry would be the same. What is required for exercise of power of second proviso of Clause B of Article 311(2) is that the authority/employer before dismissal or removal of the employee, should be satisfied for some reason to be recorded in writing, that it is not reasonably practical to hold such inquiry. It is true that as per Sub-Article 3 of Article 311, the decision of authority would be final in the matter of dispensing with the inquiry and, therefore, so far as holding of inquiry is concerned, the other authority cannot take a different view, but such may not be the case so far as the quantum of punishment is concerned. I am not expressing any final view on the said aspect and it will be for appellate authority to consider the scope and ambit of power, but one thing is apparent that the appellate authority while dismissing the appeal has neither considered the scope and ambit of the power, nor has it considered the order dated 23-11-2001 passed in the case of Nandishkumar Shankerlal. It is well settled that the quasi judicial authority cannot substitute or add the reasons which are not reflected in the order. The attempt made on behalf of the State Government by the learned AGP, in my view, of distinguishing features cannot be accepted because there is no reference whatsoever of such distinguishing feature in the order of appellate authority. The only ground on which the appeal is rejected is "as not maintainable" and, therefore, the order of the appellate authority, which is a non-speaking order, more particularly on the point of distinguishing fact deserves to be quashed and set aside.

6. In view of the aforesaid discussion, the order of the appellate authority dated 5-1-2002 is quashed and set aside on the on the ground that the same is a

non-speaking order and the appellate authority has not considered the relevant aspect of the case including the distinguishing features, if any, and authority of law for maintenance of appeal. The appellate authority is directed to reconsider the appeal and it will be open to the petitioner to raise all contentions which may be available under the law before the appellate authority. The appellate authority shall pass appropriate order in accordance with law, keeping in view the observations made by this Court hereinabove and shall render the decision as early as possible, preferably within a period of three months from the date of receipt of the writ of this Court. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs.

7. In view of the order passed in the main matter, no orders in Civil Application and the same is disposed of accordingly.

27-3-2003 (Jayant Patel, J.)

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